



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2003

Mr. Darrell G-M Noga
Roberts & Smaby P.C.
1717 Main Street, Suite 3000
Dallas, Texas 75201

OR2003-6433

Dear Mr. Noga:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID#s 187591 and 188027.

The City of Coppel (the "city"), which you represent, received two requests from the same requestor. The first sought copies of 911 calls to the requestor's address from between April 1, 1994 and January 1, 1995; the second asked for all 911 calls originating from the requestor's address from April 1, 1994 through the date of the request. You state that "all material that was accessible to the City has been released, i.e., that from 1995 onward." You contend that the city need not comply with the request for information from 1994 because the costs of doing so would be prohibitive. We have considered your arguments.

You argue generally that the city should not be required to comply with this request because doing so would subject the city to an excessive burden. Specifically you assert that "[t]he cost of search and retrieval for the requested archived material not currently stored in City accessible systems is prohibitive and an unjust burden on City taxpayers." It is a well settled principle of open records law that a governmental body may not refuse to comply with an open records request merely because doing so would be difficult or expensive. *Industrial Foundation v. Texas Insus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) ("It is our opinion that the [predecessor to the Public Information] Act does not allow either the custodian of records or a court to consider the cost or method of supplying requested

information in determining whether such information should be disclosed.”); Open Records Decision No. 497 (1988).

You also claim that, “when actual costs are 25% higher than those provided in the pertinent rules [regarding costs,] Section 111.63(a) [of Title 1 of the Texas Administrative Code] allows the governmental body to request *an exemption from production*.” (Emphasis added.) We disagree.

Section 111.61 of Title 1 of the Texas Administrative Code provides:

(a) The Texas Building and Procurement Commission (“the Commission”) must:

(1) adopt rules for use by each governmental body *in determining charges* under Government Code, Chapter 552, Subchapter F, (the “Public Information Act”);

(2) Prescribe the methods for computing the charges for copies of public information in paper, electronic, and other kinds of media; and

(3) Establish costs for various components of charges for public information that shall be used by each governmental body in providing copies of public information.

(b) The cost of providing public information is not necessarily synonymous with the charges made for providing public information. Governmental bodies *must use the charges* established by these rules, *unless*:

(1) Other law provides for charges for specific kinds of public information;

(2) They are a governmental body other than a state agency, and their charges are within a 25 percent variance above the charges established by the Commission;

(3) They *request and receive an exemption* because their actual costs are higher; or

(4) They abide by §552.267 of the Public Information Act, which reads:

(A) A governmental body shall furnish a copy of public information without charge or at a reduced charge if the

governmental body determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public; or

(B) If the cost to the governmental body of processing the collection of a charge for a copy of public information will exceed the amount of the charge, the governmental body may waive the charge.

1 T.A.C. § 111.61 (emphasis added).

Section 111.63(a) states:

The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §111.64 of this title (relating to Requesting an Exemption).

Id. § 111.63(a).

Section 111.64 provides:

(a) Pursuant to §552.262(c) of the Public Information Act, a governmental body may request that it be *exempt from part or all of these rules*.

(b) State agencies must request an exemption if their charges to recover costs are higher than those established by these rules.

(c) Governmental bodies, other than agencies of the state, must request an exemption before seeking to recover costs that are more than 25 percent higher than the charges established by these rules.

(d) An exemption request must be made in writing, and must contain the following elements:

(1) A statement identifying the subsection(s) of these rules for which an exemption is sought;

(2) The reason(s) the exemption is requested;

(3) A copy of the proposed charges;

- (4) The methodology and figures used to calculate/compute the proposed charges;
 - (5) Any supporting documentation, such as invoices, contracts, etc.; and
 - (6) The name, title, work address, and phone number of a contact person at the governmental body.
- (e) The contact person shall provide sufficient information and answer in writing any questions necessary to process the request for exemption.
- (f) If there is good cause to grant the exemption, because the request is duly documented, reasonable, and in accordance with generally accepted accounting principles, the exemption shall be granted. The name of the governmental body shall be added to a list to be published annually in the Texas Register.
- (g) If the request is not duly documented and/or the charges are beyond cost recovery, the request for exemption shall be denied. The letter of denial shall:
- (1) Explain the reason(s) the exemption cannot be granted; and
 - (2) Whenever possible, propose alternative charges.
- (h) All determinations to grant or deny a request for exemption shall be completed promptly, but shall not exceed 90 days from receipt of the request by the Texas Building and Procurement Commission.

Id. § 111.64 (emphasis added).

These provisions require the commission to establish general rules that govern the amounts governmental bodies may charge members of the public who request information. *Id.* § 111.61(a). Although a governmental body must generally adhere to the rules regarding imposition of costs, the provisions quoted above allow the governmental body to request an exemption *from the rules governing costs* under certain circumstances on a showing that particular conditions are met. *Id.* §§ 111.61(b), .63(a), .64. In other words, under certain circumstances, a governmental may request permission to charge a requestor more than the amounts established in the rules. Nothing in these rules allows a governmental body to request an exemption *from production* under any circumstances. Thus, none of the requested information may be withheld because the cost to the governmental body of producing it would be high. *See generally* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language

of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). Because you have not claimed any exceptions to disclosure, you must release the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", written over a horizontal line.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID#s 187591 & 188027

c: Mr. Peter Winegarner
521 Oak Grove Lane
Coppell, Texas 75019